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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,673	12/12/2001	Vijay A. Deshpande	12801.0081.NPUS00 TEXS:08	7069

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STEPHEN H. CAGLE  
HOWREY, SIMON, ARNOLD & WHITE, LLP  
750 BERING DRIVE  
HOUSTON, TX 77057

EXAMINER

DOROSHENK, ALEXA A

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 07/15/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/021,673

Applicant(s)

DESHPANDE, VIJAY A.

Examiner

Alexa A. Doroshenk

Art Unit

1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 13-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☒ Claim(s) 4-12 is/are objected to.
- 8) ☒ Claim(s) 1-24 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. This application contains claims 13-24 drawn to an invention nonelected with traverse in Paper No. 6. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-3 continue to be rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu et al. (5,858,314) in view of Frye et al. (3,928,178) as presented in paragraph 4 of Paper No. 6.

***Allowable Subject Matter***

4. Claims 4-12 continue to be objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

**Election/Restriction**

The traversal is on the ground(s) that the PTO has not carried its burden of proof to establish a patentable distinction between various species of the claimed invention, as required in MPEP § 808 and 806.4(h). This is not found persuasive because cited sections of MPEP, while pertinent to a restriction requirement, is not pertinent to an election of species requirement, as set forth in previous Office action. MPEP § 808

discusses reasons for restriction and § 806.4(h) is directed to the filing of a divisional or of a national application. The examiner would like to point out that § 808.01 (a) for species requirements.

To further clarify her position, the examiner notes that the election of species is proper because the species disclosed in the instant application are independent inventions as defined in MPEP § 806.04 ("If it can be shown that the two or more inventions are in fact independent, applicant should be required to restrict the claims presented to but one of such independent inventions. For example: (...) Where species under a genus are independent, for example, a genus of paper clips having species differing in the manner in which a section of the wire is formed in order to achieve a greater increase in its holding power."). Further, regarding election of species, the MPEP § 808.01(a) sets forth that when "claims are directed to independent inventions, restriction is proper pursuant to 35 U.S.C. 121, and it is not necessary to show a separate status in the art or separate classification."

#### 35 USC 103 Rejections

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a desulfurization unit should be provided down stream from a reforming stack and/or that a purification stack should be interposed between the reformer and fuel cell components) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to claim 2, applicant argues that Hsu does not disclose a plurality of cylindrical vessels and refers to figure 4 as illustrating such.

The examiner notes that terms of the claims, absent a specific definition in the claim or specification, are given their broadest possible interpretation. In this case, each plate acts as a "vessel" wherein fuel or oxidizer may pass through, thereby reading on a vessel. Additionally, figure 4 further illustrates wherein these vessels are stacks without piping.

Also with respect to claim 2, applicant argues that Frye would not have used Frye as Frye consumes hydrogen.

The examiner agrees that while Frye does consume hydrogen, it is also disclosed wherein hydrogen is also recovered (58) after desulfurization. The rejection is maintained.

Finally, with regard to claim 2, applicant argues that Frye does not disclose a plurality of cylindrical vessels and that Frye's focus is controlling temperature.

The examiner notes that terms of the claims, absent a specific definition in the claim or specification, are given their broadest possible interpretation. In this case, each catalyst bed acts as a "vessel" wherein feed may pass through, thereby reading on a vessel. Additionally, figure 1 further illustrates wherein these vessels are stacks without piping. Despite the focus of Frye being directed toward temperature control, Frye still discloses a vessel of stacked formation as claimed.

**Conclusion**

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexa A. Doroshenk whose telephone number is 703-305-0074. The examiner can normally be reached on Monday - Thursday from 9:00 AM - 7:30 PM.

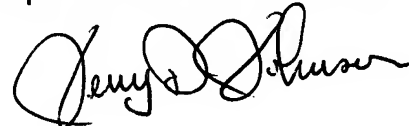
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 703-308-6824. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



JERRY D. JOHNSON  
PRIMARY EXAMINER  
GROUP 1100

*320*

AAD

July 7, 2003